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A N

E N Q U I R Y

INTO THE

PRACTICE and LEGALITY

OF

P R E S S I N G

BY THE

KING'S COMMISSION:

FOUNDED ON

A CONSIDERATION of the Methods in use to
supply the FLEETS and ARMIES of ENGLAND.

FROM THE

Earliest Period of the English Laws and History,
to the present Time.

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A N
E N O U I R Y, &c.

IT will seem strange to any one who attentively considers the constitution of the English government, that there should be any uncertainty in the law: the people has so large a share in making and executing it, that it might well be imagined they would be very careful to have it explained and amended, whenever it grew confused or ineffectual; and as different circumstances required different alterations, that they would alter the letter of their laws, agreeably to the constitution. This is far from being the case. Many old laws are still in force, though the use of them be determined; and what is worse, * though their provisions

* For an example of this, see 5 Eliz. c. 4. § 31.

are, from our present situation, become as detrimental to the public good, as they were, at their first institution, salutary. Leaving these laws unrepealed is joining dead bodies to the living. They do not merely swell the size of the statute book, which without them is excessive; but they take from the vigour of those laws which good policy requires should be strictly executed; and we have, at this day, ten volumes of acts of parliament, part of them too bad to make use of, and the rest never executed as they ought to be. This opens a double door to an evil, of all others, most to be dreaded under a free government; it gives ministers the pretence of a state-necessity to act without law, or against it. To set at defiance a statute, which universal consent declares to be a bad one, seems a pardonable boldness; and on any emergencies to adopt arbitrary expedients where the laws are deficient, or by neglect in the due execution of them, ineffectual, may even be popular with unthinking people; but it were better to suffer any evil, than to admit

admit of such a cure, and all pretence for the exercise of such power, should be cut off, by keeping the body of our laws in a vigorous state; by repealing what is useless; by explaining what is obscure; by providing, as far as human prudence can do it, for all possible contingencies; or if it should be thought a case may happen which the law has not foreseen, and which may require some extraordinary exertion of power; by perpetual provisions for immediately assembling the legislature, independent of which, neither the chief magistrate, nor any other magistrate, or any other person whatever, has, or ought to have, any power over the person or property of an Englishman.

Many instances might be produced, where ministers have found a pretence to exercise this their principle of a state necessity. In no one instance have they so effectually formed upon it an absolute and arbitrary power (the love of which, to the disgrace of human nature, seems to be incident to all governors) as in the case of pressing seamen. By the

abuse and perversion of some old statutes, which relate to the levying of men for the service of the king, in the defence of the realm, the king's ministers introduced and assumed a power, of which they have now been so long in possession, that the right seems to be established by prescription. So thoroughly does it seem to be established, that several late acts of parliament imply such a right (though no act whatever gives it) by provisions of exemption from being pressed in some cases, and by regulations for conducting it in others. These considerations have led those who wish to defend the practice, but who can bring no proof of its legality, to suppose the king's power of impressing sea-men to be a part of the common law of England. But surely those who assert this, very little know, or very little love, our common law. The first principle of our common law is the liberty of the subject; *Magna Charta* itself, is but a declaration of the common law, in this respect. Can the common law contradict itself? Or is a seaman not to consider himself as a free born

born Englishman? Neither can length of time merely make it to be a part of our common law. It is a rule of common law,* that no length of possession, taken by violence, can give a right: besides, had pressing been part of the common law, Lord Coke would have known it to be so; and had Lord Coke known, or thought it to be so, he would certainly have made some mention of it; he who has commented on every part of the common law with the most minute exactness. It was, however, undoubtedly the practice to press in his time; and his total silence on this head, can be accounted for no otherwise, than by supposing he knew it to be illegal, but thought it expedient. As little is the legality of pressing founded on any statute: if it be, let those who contend for the legality produce the statute: pressing is neither by the common law, nor by statute, a lawful practice. But is it not, as I have imagined Lord Coke to have supposed it to be, expedient? Be it so. That is a good reason to make it lawful;

* Bracton, folio 222.

why is it then not made so by the only constitutional method possible, an act of parliament? There can be but one reason. The king's ministers choose rather to act by arbitrary measures under a doubtful title, than by sanction of law; one instance of absolute power well established will justify more; and indeed, if the doctrine of expediency or state-necessity be admitted in one case, it is conclusive in all; and the King of Great Britain is of right, and may be in fact, as absolute a monarch as the Great Mogul.

It may be worth the while to investigate by what means this illegal practice was first introduced; by what steps established. To do this properly, it will be necessary to enquire, what has been the legal method of raising forces by sea and land, for the defence of the realm, from the most ancient periods of our government; and by tracing carefully the different changes which at different times have been made in that part of our policy, we may be able to discover, on what abuse of law
this

this great oppression is founded. All wrong in government has its source from abuse of law : to this abuse the most despotic monarchs owe their power. In the first forming themselves into societies, men never could agree to hold their lives, their liberty and property, at the will of one man, a frail creature like themselves. Law, by common consent, for the publick good, first made kings; without doubt the law that made them was originally the rule of their government, and the limit of their power; and when the people first tamely suffered their king to pass that limit, without complaining, the first foundation of arbitrary power, "*the enormous faith of many made for one,*" was laid.

Our Saxon ancestors were swarms from the great northern hive of Goths or Scythians, that extended from the easternmost boundaries of Tartary to the coasts of Norway, and who, at one time or other, have over-run and conquered the greatest part of the globe. The countries of which they took possession by violence,

violence, they governed* by the most consummate wisdom : this our present government, the substance of which, if not the form, we derive from them, abundantly testifies. Wherever they settled, they introduced a threefold division of landed property. Accordingly under the Saxon Kings, all the lands in England were demense, allodial, or feudal : demense lands, were those lands which were given to the king (originally their general or leader, at the time of their invasion) for the support of his dignity, and the ordinary expences of his government ; these he could not alienate, not even to the church, in those times of bigotry, without the consent of his people ; they were afterwards called crown lands, and were of very considerable extent and value a long time after the conquest. Lord Coke calls them *dominica coronæ regis* : allodial lands were so called from Allhood ; *eal* in the Saxon tongue signifies all, or entire, the termination *hood* denotes a state, as in manhood, widowhood, &c. Hence those

* Italy never enjoyed so long a peace, nor was so well governed, as under Theodoric.

lands were called allodial, the possessor of which had the entire property of them. These, it is likely, were originally lands that belonged to such of the natives as favoured, or did not resist, the Saxons at the time of their invasion : such lands at least as they left to the natives, after having parcelled out what they chose among themselves. Certain it is, that allodial lands were such in which the possessor had an absolute property or *dominium*. Feudal lands, are lands of fee-hood ; *fee* in the Saxon tongue, is benefice or usufruit ; these were lands distributed among the conquerors at their invasion, the property of which continued in the state, but the fee or enjoyment of the profits was given to particulars, on condition that they should be always ready to attend, armed and accoutred, for the defence of the state. From holding their lands on this condition, they were called holders, or tenants, in Saxon *thanes* ; the generals were great thanes and had large portions of land ; the inferior officers and common men smaller ; all were free, all had a right to assemble in the * yearly

* Champes de Mai. Voltaire.

meetings, but held their lands on the condition above-mentioned: hence they were *freeholders*, in contradistinction to the farmers and villains who hired the land and cultivated it under them; and hence the meaning of that word at this day. The great thanes came afterwards to be called lords, and counts, and earls; and they portioned out their large possessions to under-tenants, all liable to the same condition of serving, and to these under-tenants the term thane was afterwards appropriated. Yet strictly every man who held feudal lands, whether lord or under-tenant, was a thane to the state; and the condition by which the lands were held, was always called a tenure. All were held to the defence of the realm; the thane or under-tenant, at the summons of the lord, the lord of the king. It must be observed that this service was merely personal, those who owed it could not to do it by another, or be excused in consideration of any other service, or money to be paid in lieu of it. Just excuses of sickness, or other lawful impediments, were admitted from the thanes by the

the lord, from the lords by the king : but whoever, not having such excuse, * neglected to attend and perform this personal service, or quitted it without leave, or ran away in battle,† forfeited his feudal lands, if a thane to the lord, if a lord to the king ; and the king or lord gave the fee or enjoyment of them to some other person, upon the like terms of personal service.

Thus we see how soldiers were raised for the defence of the realm under the Saxon kings. The ordinary fleet for guarding the coasts was formed and supported by the different sea-ports, which, in proportion to the advantages of their trade, were bound to fit out and maintain a certain number of ships. On extraordinary occasions the fleet was increased at the expence of the land owners, whether feudal or allodial, throughout the whole kingdom. Edgar is said to have had 3600 sail of ships, and to this perhaps was owing the singular happiness of that peace his subjects enjoyed

* Leges Edwardi. Wilk. p. 122. † Ibid p. 205.

during his reign, which was not disturbed by any Danish invasion. It was * a law under the Saxon government, that a fleet should yearly be fitted out at Easter. This law related to the ordinary fleet for defence of the coasts, to be mustered rather than fitted out annually: how the navy was augmented, in cases of danger from invasions, may be gathered from the account of the fleet fitted out in the year 1009 by Ethelred the Second. The Saxon annals relate that every 310 hides of land were obliged to find one ship, and every eight hides, a helmet and breast-plate. As England contained † 600,000 hides of land, ‡ this fleet consisted of 1935 ships: and by the number of breast-plates and helmets, which seem to have been intended as defensive weapons for the sailors, this fleet was manned with 75,000 men; 38 to each ship, one with the other. If to these we add the ships found by

* Ibid. p. 122.

† This appears from the raising of 30,000 danegille in the same reign, by a shilling on every hide of land.

‡ Exclusive of the church possessions which were not liable to bear their part of the common burden.

the ports, it will make that which is related of King Edgar's fleet, and which historians speak of with doubt and astonishment, the less incredible. These forces in the time of the Saxon kings, were liable to serve for defence of the realm by sea and land, and for defence of the realm only. By the common law before the conquest, and since, it was part of the freedom and birthright of an Englishman, that he should not be compelled to serve in foreign wars; this appears by several acts of parliament, which, as Lord Coke * observes, are but declaratory of the common law.

William the Norman changed the whole system of landed possessions in England by the invention of *servitia forinfeca*. To have a clear idea of these, it must be observed, that at the time of the conquest, the allodial and feudal lands, throughout the kingdom in general, were let out at will, a rent and certain services to plough the lord's land, &c. being reserved to the owner or lord.† This prac-

* Inst. 2. § 28.

† See Philpot's Villare Cantianum. p. 39.

tie gave rise to copyhold lands at this day; the conqueror insisted that besides these services due to the lord, the service of attending the king in his wars was due to the crown, personally to be performed indeed, yet not in respect of the person, but in proportion to the quantity or value of the land, whether allodial or feudal; and that whether let out to tenants at will, or in possession of the owner. This new-invented service was called Forinſic and the services due to the lord from the tenant at will Intrinſic. By this device the slavish Norman principle was introduced in our law, that the king is lord paramount of all the lands in England; and the conqueror making himself in fact the proprietor of every acre, enslaved (if the expression may be allowed) the whole soil of the kingdom, by imposing on it this new service. Under the Saxon government the lands were all free; the allodial absolutely so; the feudal holden of the state, not of the king, (as the German Princes hold of the empire, not of the Emperor) on condition

of personal service by the tenant for defence of the state, no respect being had to the value of the lands. The new invention, as Spelman justly calls it, of Forinſic ſervices * deſtroyed the very idea of allodial, and changed the nature of feudal poſſeſſions. In conſequence of it, the whole kingdom was levelled by the iron hand of power, and portioned out for the performance of this new ſervice. Every ſuch quantity of land as was at that time thought ſufficient to ſupport a knight, (20l. *per annum*) was called a knight's-fee, and the owner was brought to attend the king in his wars, on being ſummoned, properly armed and accoutred, at his own expence, by the ſpace of forty days: this was termed knight-ſervice. To this new tenure, homage, fealty, wardſhip, and marriage were annexed: engines for the king to oppreſs the owners, and the owners or lords of knights-fees to oppreſs their tenants, and as ſuch aboliſhed by act of parliament at the reſtoration; for to that period had theſe dregs

* See Coke Litt. p. 2.

of the Norman tyranny subsisted. As this new service was, *ratione tenementi non personæ*, not personal but in proportion to the value of every man's possessions, one man might be possessed of many knight's-fees, and in this case must be obliged to find somebody who should perform for him, what he could not do himself. Hence the land-owners, or lords, granted out parts of their lands to tenants: to some, on condition of performing for them the duty of a whole knight's-fee, * to others the duty of the half, or even the quarter of a knight's-fee: these were called tenants in Escuage; and were obliged to attend the lord when summoned to the king's wars, to perform with him collectively the duty which was owing, at the rate of a man forty days for every knight's-fee, for all the land he held himself, or had granted out to them. This was the method of forming armies under the Norman tyrants; slavish in its principle; oppressive in its consequence. When the king wanted to extort a sum of

* See Lyttelton's chapter of Escuage, 1 inst. 69.

money from his subjects, he summoned all who owed him knight-service, to attend at a place and time appointed, and when they came together discharged them on payment of a certain sum of money for every shield; from whence this extortion was called *Scutagium* too, or *Escuage*. With this money, thus extorted, the king raised volunteers, and this practice first gave rise to the enlisting soldiers by pay in England, and was moreover the illegal foundation on which the legal method of aids and subsidies granted by parliament, as used at this day, was built: money-taxes were unknown under the Saxon government. It has been before shewn that the fleet was fitted out by the sea-ports, and the landowners, a ship for every 310 hides of land; the army composed of the feudal thanes or tenants; the dignity of the crown supported, and the ordinary expences of government defrayed out of the demesne lands; there could be no occasion for money-taxes, and the use of them was not then known. Peter-pence was a voluntary contribution, re-

strained by more laws than favoured. Dane-gilt, which was first raised in the reign of Ethelred the Second, was an * extortion of the rapacious conquerors, not an establishment of Saxon policy, which knew not money-taxes. The English therefore, though they submitted to the new invention of knight-service, looked on this abuse of it, to extort money by *scutagium*, as a great oppression. The service they were ready to perform on just occasions, but the payment of this escuage, in consideration of a discharge from pretended expeditions, they insisted was illegal. Many through fear submitted to it, but all denied the right; and the payment of it was the perpetual cause of contention between the kings of the Norman line and the people of England, to the reign of Henry the Second. That king, in whose veins flowed the blood of the patriot Saxon kings, chose to govern like them, by law not by arbitrary power; and persuaded his parliament

* Accordingly, after having been levied 38 years under the Danish line, it was abolished by Edward the Confessor.

in the year 1159, by law, to convert knight-service into a money-tax, called too *scutagium* or *escuage*. This, as Lord Littleton observes in his most excellent history, was the first money-tax raised in England. By consenting to it, the parliament introduced the practice of giving those aids by law, of which, ever since the conquest, they had complained as the most grievous oppression when extorted from them by their kings. Yet was it wisely done, as they perpetually secured the right of having no aids levied on them without their consent. Besides, though they paid their money they were freed from knight-service, which was no less expensive. No new burden was laid upon them; the mode of imposing it only was changed. How advantageous this change was to the people is obvious. When they were liable to perform knight-service, the king could call them out whenever he thought fit, and make the burthen greater or less at his pleasure: by turning that service into a money-tax to be granted by consent of parliament,

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they had it in their power to refuse to submit to the burthen, whenever they thought it unreasonable. This proceeding of King Henry was agreeable to the rest of his government, which, as ^{*} Lord Coke observes, procured him the never dying honour, that *Magna Charta*, and many other acts made in the reign of his weak grandson, were referred to his reign; that matters should be put in ure, as they were accustomed in the time of Henry the Second. Thus did knight-service give place to aids and subsidies, and with the money arising from them, our kings hired troops to serve them in war. It was some time, however, before this change was uninterruptedly established. King John, in the first year of his reign, had a *scutagium* or subsidy granted him by his parliament; but finding some difficulty in obtaining it, and that a complaint of grievances accompanied the aid, the year following, instead of applying to parliament, he had recourse to the old illegal Norman expedient. He sum-

* Inst. 2. 29.

moned, on the day of the Ascension, all who owed him knight-service to be armed and accoutred at Portsmouth, ready to embark on the Whitsunday following. Those who appeared he discharged on payment of * two marks of silver for every shield. Hence, all the troubles of his reign: hence, was he forced to grant those famous charters, which were in truth no favour, but a written declaration only of the right of the people.† In these it was expressly declared, that no aid should be raised but by consent of the Common Council of the kingdom. Henry the Third followed the maxims of his father's government, and with the same success: his reign was almost a continual state of war with his

* This was as much silver as is now contained in 4l. 8s. 7½d. of our present money; and by the comparative price of the necessaries of life, was then worth as much as 20l. 3s. 6d. is at this day.

† In the 8th chapter of the charter granted in the 17th year of King John's reign. This chapter was omitted in the confirmation of this charter by Edward the First as will be observed hereafter. The great charter, at the head of our statute book, which is an exemplification of that of Edward the First, stands garbelled of this 8th chapter. See Coke's Inst. 2, 20,

subjects,

subjects, and to this struggle, during which,
 he too was forced to confirm the charters of li-
 berty, do we probably owe the present form
 of our government, and the liberties we at
 this day enjoy. Edward the First succeeded
 to his father, a prince he was of an high spirit,
 and disposed enough to arbitrary measures.
 In the 24th year of his reign he levied a tax
 on all cities, boroughs, and towns, without
 consent of parliament. The year following,
 he had recourse to the old Norman expedient,
 of summoning all who possessed a knight's
 fee, to attend his service in Guienne, or con-
 tribute money in lieu of it. The people
 however would not submit to his tyranny;
 with Bohun, Bigod, and Ferrers at their head,
 (names which should be for ever dear to the
 English) they boldly petitioned the king for
 redress of grievances, instead of attending
 his summons, and refused to serve him in
 his foreign wars, or to contribute any money
 not granted by parliament. The king wise-
 ly, though unwillingly, gave up the point:
 how unwillingly may be known from his
 suppressing

suppressing the chapter against levying money without consent of parliament, when he graciously, of his own motion, confirmed the charters of liberty; and from his insisting to add to this confirmation a clause "saving the prerogatives of his crown," which however the parliament made him give up. At last, in the 34th year of his reign, the original chapter in *Magna Charta*, against levying money without consent of parliament, which had been suppressed in his confirmation of the charters, was formed into an act by itself, "*de tallagio non concedendo*," in which it is declared, that no tax can be laid on the subject but by consent of parliament. This settled the point in dispute between the king and the people. As no money could be raised but by consent of parliament, it was to no purpose to summon the owners of the knight's fees, in hopes of raising money by their discharge. The legal change of knight-service into a money-tax, first practised in the reign of Henry the Second became effectually established.

During

During these periods the navy experienced the same changes as the army. In the time of the Saxon government the ordinary fleets, which assembled every year, were supplied by the ports, as the armies were by the feudal tenants. At the conquest the doctrine of Forinfic services took place in the ports as well as on shore; this will appear from the charter of King John to the Cinque Ports, when that king, after knight-service had been turned into a subsidy by King Henry the Second, attempted to revive it again both by sea and land.* Before the conquest what are now called Cinque Ports were only three, Dover, Sandwich, and Romney: and if they were incorporated in the Saxon times, it was only as Kentish Ports, for the purpose of supplying jointly that quota of ships which every port in the kingdom, in proportion to its ability, was bound to furnish. The very name of Cinque Ports proves they were not in the Saxon times the body corporate they are at this day: for although when they became seven the original

* Coke Inst. 4. 222.

name of the Cinque Ports might remain, it is impossible they should ever have been called the Cinque Ports when they were but three. The name, the jurisdiction, their privileges, and the tenure by which they held them, were unknown before the conquest. As this part of the coast was the most liable to be invaded, and the most convenient from whence to embark for Normandy, and as Dover Castle was thought to be the key of the kingdom, William the Conqueror incorporated five ports (Hastings, where he landed, and Hythe being added to the three above-mentioned) under the constable of Dover Castle, and warden of the Cinque Ports,* which offices he first appointed. King John encreased their privileges, and added to them the ancient towns of Winchelsea and Rye by a new charter, the condition of which was, that they should provide a certain number of ships to serve at their charge for forty days, as often as the King should have occasion for them, in his wars, or to cross the seas. This

* Camden.

was no new condition, but the same (except perhaps as to the number of ships) as the original condition in their first charter of institution by William the Conqueror. It was the knight-service of the barons of the Cinque Ports, introduced by the Conqueror and attempted to be revived by King John and his successors, but in vain. Knight-service, as has been related above, was at last effectually changed into subsidies, and the barons of the Cinque Ports enjoy their privileges to this day by payment of their part to those subsidies instead of the service which was the original condition of their charter. The other ports in the kingdom experienced the same change: they had not indeed been incorporated, but they were oppressed, there can be no doubt, by the Norman yoke of knight-service, and relieved from it in common with the Cinque Ports and the rest of the kingdom, when, instead of knight-service, subsidies were granted to the king, with which he levied and paid forces for his service both by sea and land.

The next thing to be enquired is, in what manner these levies were conducted.* Lord Coke tells us that when the king was to be served with soldiers for his wars, a knight or esquire of the country that had revenues, farmers, and tenants, covenanted with the king to serve him in his war for such a time with such a number of men: and the soldiers made their covenant with their leaders or masters; and then they were mustered by the king's commissioners. By the 5th of Richard the Second, c. ii. these contracts are to be enrolled in the Exchequer. On entering into these contracts an advance of a certain sum was made from the Exchequer to the contractors: this money was called (and still is called in other contracts) *Prest*, or *Imprest Money*; from the French word *prest* ready, says Chambers† and Jacob; ‡ from the Latin word *præstitum*, engaged, says Sir Matthew Hale.¶ Be the etymology what it may, the meaning of *prest* or *imprest-money* is money advanced to a person out

* 1 Inst. 71. and 4 Inst. 86. † Chamber's Dict. *PREST*.

‡ Jacob's Law Dict.

¶ Pleas of the Crown.

of the Exchequer, in consideration of which he engages to be ready to perform some contract or service.* The auditors of the imprest are officers in the Exchequer who make up account of naval and military expences, and of all monies impressed to any man for the king's service. As the captains were engaged to the Exchequer, the soldiers were engaged to the captains, who enlisted volunteers by giving them earnest or prest money, as it is called in the † old statutes, and these men so imprest or engaged were mustered by the king's commissioners.

When seamen were wanted, the king issued a commission for impressing seamen for the navy, that is for engaging them by prest money to enter into the service. By virtue of this commission the Lord High Admiral issued warrants, to the Vice-Admirals of the several counties, &c. directing them to raise a certain number of men for his majesty's fleet. The form of these ancient warrants, for raising

* Chamber's Dict. † 7 Hen. vii. c. 1. 3 Hen. viii. c. 5.

sing volunteer seamen subsists in part to this day in the modern * press-warrant, which direct that prest-money (and still more in the warrants issued so lately as in Charles the Second's reign which direct that conduct money too) shall be given to the men impressed. If we understand *impress*, *press*, and *press* or *prest-money* in the original signification of the words, and as they are understood at this day in the Exchequer, warrants for pressing are warrants for raising volunteers, and not by compulsion: and the shilling prest-money in the present warrants, and the conduct money in those of the Duke of York, directed to be given to men impressed plainly imply this, and are absurd, if they are understood to be warrants for forcing men into the service. These words in the warrants, were never meant to authorize the violence now practised by their authority; but that violence being established by the abuse of the warrants altered the common acceptation of the words. Prest-money, wherever it occurs in our old statutes, in the old

* See the appendix.

Exchequer accounts, and even in all Lord Coke's writings, invariably means earnest-money given to sailors, or soldiers, or contractors for the king's service, after subsidies were granted in the stead of knight-service, and our kings with the money used a new method of forming their armies, and manning their fleets, by raising volunteers retained by prest or earnest-money to serve.

This method had one great inconvenience, little known in the feudal armies: desertion became more common. To prevent and remedy this evil, a writ at common law was invented, of *capias conductos ad proficiscendum*, for obliging those who had contracted to serve, to perform the service: and parliament provided by several acts against those who neglected to join their musters after enlisting, or who quitted the service without a discharge. It should seem that desertion was more frequent among the sailors than the soldiers, as the act of Richard the Second inflicting a penalty on mariners retained to serve the king on the sea, who depart without

out licence, was made sixty-one years before 18 Henry the Sixth, c. 19, which was the first act for punishing desertion in soldiers. Strange it is that * Sir W. B. should quote this act of Richard the Second, as implying the legality of pressing as it is now practised. The original act was in French: in the preamble it is said, "*Item pur ceo que plusours mariners apres ce qu'ils sont arestuz et retenuz pur ser-*" "*vice du roi.*" The French word *arester* signified at that time, as it does now, to arrest and to hire. The English translation absurdly renders *arestuz* arrested instead of hired. On this single word, arrested, in the translation, Sir W. raises an implication, that pressing (by compulsion) was practised in the days of Richard the Second. Is it possible that a learned judge should be so wanting in a critical knowledge of that language in which many of our laws were written? Is it possible that an academical scholar should, from the equivocal meaning of a single word in a translation, explain a passage in direct

* Com. b. i. c. 13.

contradiction to the context? The men of whom the statute speaks are (to use the translation with Sir W.) arrested and retained; that is, according to Sir W's implication, forced and retained, in other words, forced and engaged, by a fee or wages, which, if it implies any thing, implies a contradiction.

This act of R. II. related to mariners only. By 18 H. VI. c. 19. it was made felony for a soldier to depart without licence: and afterwards by 7 H. VII. c. 1. if any soldier immediately retained with the king which hereafter shall be in wages and retained, or take preft-money to serve on the sea, or upon the land beyond the sea, depart out of the king's service without licence of his captain, such departure shall be felony. Here the word preft is used, and in the 2 and 3 Ed. VI. c. 2. § 18. it is called preft-money and in the 5 Eliz. c. 5. it is again called preft. From hence we see that a preft-man originally in our law meant a man retained by earnest to serve the king; and to the 2 and 3 Ed. VI.

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ann. 1548 inclusively there is no mention, or even implication, of a power in the crown to force men into the service by sea or land against their will, as prest-men are understood to be compelled at this day.

But although the right is not to be found in our laws, the practice may be found in our history as early as the reign of Henry the Eighth. How it came to pass that the king's commissioners for pressing, that is, retaining men by prest-money should abuse their warrants so far as to force men into the service, can only be conjectured. In the reign of Henry VIII. a severe law was passed against warrants. By the 39 Eliz. c. 17. it appears that the most troublesome vagrants at that time of day were disbanded soldiers, and seamen out of service, wandering abroad. It is therefore not unlikely that after the law against vagrants in the reign of Henry the Eighth took place,† whenever

a com-

* 22 H. VIII. c. 12.

† At this day when prest warrants are issued, an order of council is sent to the *custodes rotulorum*, requiring them to call

a commission for raising seamen or soldiers was issued, those to whom the warrants were directed, wherever they found a wandering sailor or soldier, either laid hold on him of their authority, which was connived at, as removing a nuisance, or received him from the magistrates as a vagrant; the man himself perhaps choosing rather to enlist against his inclination than to suffer the law; as we now see men consent to serve the India Company rather than abide the consequence of an indictment. Thus is it possible that the oppression of bad men, by perversion of law, may have established a precedent which at this day is put in force against some of the most useful and best of the king's subjects. We may be well justified in conjecturing that pressing by force was first introduced against men obnoxious to the law, since it is certain that this violence was used against men, who in those motley days of liberty were obnoxious to the king.*

call upon all justices of the peace to cause all straggling seamen to be taken up and sent to the clerks of the Checque of his majesty's yards, &c. to be put on board his majesty's ships.

* Chamberlain's Survey of London, p. 193.

Read,

Read, an Alderman of London, in the year 1544, for refusing to pay an arbitrary benevolence assessed on the city by Henry the Eighth, was pressed, and sent for a common soldier into Scotland. This is a proof of the practice in its most violent extent ; but no more proves a right in the crown to press by force, than it proves King Henry had a right to raise the benevolence without consent of parliament.

The first law which mentions the king's commission for pressing is the 2d and 3d Phil. and Mary, c. 16. made touching watermen and bargemen on the river of Thames. The preamble speaks of " the time of pressing by commission for the service of the King and " Queen's majesty on the sea." This, as before observed, was originally a commission for raising volunteers, and, for any thing in this act to the contrary, might be no other in the time of Philip and Mary. The 8th section enacts that " any person which shall use " the occupation of rowing between Gravesend " and Windsor, which in the time of the exe-

" cution of any commission of pressing which
 " shall be had for the service of the King and
 " Queen, shall willingly withdraw and hide
 " themselves in the same time of pressing, and
 " when such time of pressing is overpast, shall
 " return to the said river to row, shall suffer
 " imprisonment two years, and be banished
 " any more to row for the space of a year and
 " a day." This act respects the watermen and
 bargemen on the Thames merely. By this act,
 and more especially by the 4 Ann. c. 19.
 made to explain it, it should seem that the wa-
 termen's company are bound to find a certain
 number of recruits whenever the king's commis-
 sion for pressing is issued; and that the idle and
 disorderly fellows of that trade (to whom the
 provisions of this act expressly relate) in these
 times withdrew themselves and left the indu-
 strious part of the company to perform this
 service. This act might therefore be made to
 prevent such men from returning to reap the
 advantages of the exclusive rights of their
 company, who had refused to bear their part of
 that burthen which was the purchase of those
 rights.

rights. This act which has been quoted as implying the legality of pressing, strongly implies the contrary : had pressing at that time been a legal practice, surely it would have been mentioned, and made use of in this law; although the profound silence of the rest of the statute book, with regard to forcing men into the service, should not be admitted as a presumption of its illegality, how can it be accounted for that this law should not refer to it; should not make use of it, if legal as the most natural means of punishing the offences against which this law provided ? Instead of banishing from the river for a year and a day, those disorderly watermen (who were, as the act declares, carders, dicers and suspected robbers and felons) for withdrawing themselves in the time of service, this act, if such forcing had been legal, would naturally have provided that they should have been liable for their vices to be forced to serve wherever they should be found; not a word of which being forced to serve is either expressed or implied with regard to them or any other persons in this statute, excepting
from

from the equivocal expression of the king's commission for pressing, which is apt to be interpreted in a sense agreeable to our prejudices at this day. I speak here merely of the legality of pressing by force: with regard to the practice, it was undoubtedly in use at that time, as has been before observed; and if the waterman's company were obliged to furnish a certain number of men it is likely they dealt with the disorderly fellows of their company under this law, as I suppose the justices of peace to have dealt with vagrants under the 22 H. VIII; by giving them a choice to be punished or to serve, or perhaps by downright compulsion, make those men they wanted to get rid of the scape-goats of their company. Upon the whole, there is great reason to believe that pressing by force, like all other usurped powers, was introduced by degrees. Those *wild men* were at the first the victims of it whose *hand being against every man had every man's hand against them*. Connived at in the beginning, and perhaps made use of by the magistrates (who are too apt to act by expediency

pediency rather than by law, and who are tyrants whenever they do so) this power soon found strength enough to demand the concurrence of the magistrate, and at last to act without it. The 5th Eliz. c. 5, is the first law which implies pressing by force to be legal, and which proves the practice to have been established throughout the coasts of the whole kingdom. This implication of a modern law cannot justify a direct violation of the liberty of the subject against *Magna Charta* and the tenor of those many acts which have confirmed it. Should any man be found weak or wicked enough to think so, still it cannot justify those warrants which the A*****y at this day issues to be executed by naval officers, and which naval officers do execute without any authority from the civil power: unless the backing these warrants by a justice of peace be called an authority of the civil power, which can serve only to make the general warrant of the Ad——y a general warrant of a single justice! The 5 Eliz. c. 5 § 43 is still in force. It enacts that “no fisherman using or haunting
 3713 “ the

“ the sea shall be taken by the queen’s majesty’s
 “ commission to serve her highness as mariner
 “ on the sea: but that the said commission be
 “ first brought by her highness’s taker or takers
 “ to two justices of peace next adjoining
 “ and inhabiting to the said sea-coasts, towns,
 “ or other places, where the said mariners are
 “ so to be taken, to the intent the said jus-
 “ tices may choose out and cause to be return-
 “ ed such sufficient number of able men, as in
 “ the said commission shall be contained; to
 “ serve her majesty as is aforesaid.” No com-

mission therefore of the king’s for pressing
 (even supposing pressing to be legal) can be exe-
 cuted but by two justices of the peace to whom
 the queen’s takers (or to speak modern English
 the regulating officers) are to carry their com-
 missions and from them to receive such men
 as the said justices shall deliver to them. This
 clause makes the justices the tools of an arbi-
 trary power, which no law in fact justifies;
 but on every principle, it excludes every per-
 son but the justices from exercising that power.

The Ad—y therefore can have no right to
 give

give that power, as by their warrants they affect to give it, to the regulating officers: nor can justices legally delegate their power by backing those warrants. Every man who is impressed by virtue of such warrants so backed, is (even supposing pressing to be legal) an injured man; and if the laws are still in force, has his remedy at law against every one who attaches him, or who backs such general warrants for his attachment contrary to law.

Thus was the method of raising seamen for the service of the king changed, not by law but by perversion of law, from the enlisting of volunteers to the forcing of men to serve. It is most likely that this change began in the reign of Henry the Eighth, by an oblique execution of the law against vagrants passed in that reign; that it gained strength in the reign of Philip and Mary, by the act which punishes disorderly watermen, who withdraw themselves during the commission for pressing for the king's service,

vice, but which however gives no authority for pressing such watermen; and that it was established and would have become a child of the law (but that our law knows neither bastards nor adoption) in the reign of Queen Elizabeth. In those days the prerogative-royal was too much understood to be, what ill-designing men affect to think it still, a right in the crown to exercise certain powers independent of the laws; not what it really is (and what Lord M——d, if I am not mistaken, in the House of Lords lately declared it to be—*si sic omnia dixisset!*) the duty of the king to exercise those parts of government, which the laws appoint he should exercise. Add to this, that the reign of Queen Elizabeth was long and glorious. She in general governed her people well, and they loved her; and in many instances paid a submission to her, which they would not suffer to be brought as a precedent under a less favoured reign. Our ancestors submitted to the practice of pressing during her life; but they never formally acknowledged the right.

right. Afterwards, in the reign of King Charles the First, they would not allow of the practice merely by the king's warrant, and provided against that grievance among the innumerable grievances of that unhappy reign. In the 15 Car. I. an act was passed for pressing sailors, and another for the same purpose the following year. What the total silence of the law hitherto implied, this speaking of the law puts out of doubt. * Sir Matthew Hale, in considering the legality of pressing says, " he that looks on these acts for pressing sailors and soldiers in King Charles's reign, may think that those times made some doubt about it." Mr. Emlyn, Sir Matthew Hale's commentator, more in the spirit of a good citizen, as well as of a better logician, concludes, that those times rather were clear that it could not be done without a special act of parliament for that purpose. The opinion of those times, however, and the illegality of pressing

* Vol. i. 679.

by the king's warrant is put out of all doubt, by an act passed in the same parliament for pressing foldiers; the preamble of which declares, " that the king has in no case, or on " any occasion but the invasion from a foreign " power, authority to press the freeborn subject; which could not consist with the " freedom and liberty of his person." This act was for pressing foldiers, but the position in the preamble, that the king *in no case* has authority, excepting on occasion of an invasion, to press; and the reason given, for that it cannot consist with the liberty of the subject; are as conclusive against the legality of pressing sailors as foldiers. What may have been the preamble of the two acts passed in that parliament for pressing sailors, as they are expired, we cannot know from our statute book; but, although there should have been no such preamble, the very passing of those acts for the purpose of pressing sailors, proves that the pressing of sailors was not legal without an express law: and this preamble for pressing foldiers, declares pressing to be
illegal

illegal in all cases, and therefore by sea as well as by land. King Charles, did not pass this act, with a preamble so offensive to the maxims of his government, without a long struggle. * Clarendon, who has preserved the preamble in his history, tells us, that the lords looked on this as a new doctrine, (so well was the violence established by long use) and that the Attorney General, took courage to desire the lords, that he might be heard on the king's behalf, before they consented to a clause so detrimental to his majesty's prerogative. Attorney Generals, in those days and since, have been found who for all virtues have had the faith and hope, that court-favour might convert a drudge of an Attorney into a High Chancellor; as the influence of the sun-beams changes dirty grubs into splendid butterflies. The Attorney however spoke in vain. The bill after some contest passed the House of Lords, and was passed by the king. The act expired with the year : but it is still among

* Vol. i. 326.

the records of parliament, and the preamble is a declaration of what was law at that time. It proves that pressing by the king's warrant was at that time illegal. It must still continue to be illegal, from the nature of our constitution unless some act of parliament passed since that time, and now in force, can be produced, which expressly gives that power to the crown.

Charles the second and his brother, to judge of them by their government, seemed to have forgotton the dreadful example of their father's sufferings, and the miracle of their own restoration; and their abominable attachment to arbitrary power brought a catastrophe on their family, greater than it had experienced (horrible as that sentence was) in the person of the martyr. I call him martyr in compliance to popular prejudice, for he lived to give up the church of England instead of dying a martyr to it. During the reign of Charles the second, and under the ministry of his brother, who was Lord High Admiral, the usage of pressing by the king's warrant

warrant was again introduced, and became so well established that it has continued the constant practice to this day, and has again found its way indirectly into the statute book, where it is spoken of as a power implied to be in the crown, though there be no law for granting it, and in spite of the acts of the 16th of Charles the First, which so plainly prove it to be illegal. Precedents of the arbitrary practices prior to those acts are the rule by which the Lords of the Admiralty at this time guide themselves; and warrants are issued by them to the inferior officers of the navy, with absolute orders to force men into the service. This, by comparing a modern warrant with one of those issued by James Duke of York, when Lord High Admiral, will appear to be a considerable improvement; and the evil, grievous as it is, may be a growing one. So difficult is it (as Lord Coke justly observes) “to restore the subject again to his former freedom and

• Inst. ii. 528.

“safety,

“safety, when ancient law or custom of parliament is broken, and a crown possessed of a precedent.”

Thus, by considering the various methods of supplying men for the king's service by sea and land in use from the Saxon kings to our days, I have endeavoured to shew, or to conjecture at least, how the present absurd and inhuman manner of pressing by force came into practice; and to prove that the doing it by the king's warrant is not legal. To prove a negative, is neither an easy nor a pleasing task. Those who take the other side of the question, have the opportunity of a more regular proof (if they have any proof at all) as they need only point out the statute which gives this power to the crown, or quote some cases from the year books or reports that mention it as a right in the crown by the common law. Sir William Blackstone* owns “that no statute has

* Com. b. i. p. 419.

“expressly

“ expressly declared this power to be in the
 “ crown, though many of them strongly
 “ imply it.” Implication in favour of the
 subject’s liberty, may be allowed to have some
 weight; for an Englishman is born free,
 that is, liable to no restraint but that of law;
 and an implication in favour of his freedom,
 is no more than a declaration of his natural
 rights: but shall any implication take those
 rights away? On the contrary, a law abso-
 lutely inconsistent with the existence of the
 liberty of the subject is null and void. I shall
 ground my proof of this assertion on an opinion
 of the present House of Commons, an au-
 thority to which Sir W. B. will hardly ob-
 ject. That house has voted general war-
 rants to be illegal. This vote did not make
 general warrants to be illegal; for I am not one
 of those who think the House of Commons
 can make a law, but I suppose, though they
 cannot make laws, they know what is law
 and what is not. Trusting then to their
 opinion, I conclude that all general warrants
 are illegal. And yet there is to this day a

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statute

statute * unrepealed, which authorizes the exchequer to issue general warrants. If the present House of Commons is right in its opinion, these general warrants issued by the exchequer, under the direction of an act of parliament now in being, are illegal; and of course, a positive law regularly formed by king, lords and commons, null and void, as it implies the subject is not free, and deals with him contrary to our charters of freedom.

These charters are briefly cited in the † preamble to the act for taking away the star-chamber court; which act, and ‡ the following (one for repealing the high commission court imply too (for implication may with a better grace be used in favour of liberty than against it) that which I have contended the opinion of the present House of Commons, compared with the 13th and 14th C. II. implies; namely, that a law regularly

* 13 and 14 Car. II. c. 11. § 5 (2). † 16 Car. I. c. 10.

‡ 16 Car. I. c. 11.

made, is absolutely null and void, if it be inconsistent with the very existence of the liberty of the subject. The star-chamber and high-commission courts were appointed by regular acts of parliament. When they were repealed the legislature was not satisfied with a simple repeal of those acts, but have given posterity to understand it was their opinion that those laws, as being inconsistent with the idea of liberty, were of themselves null and void. It is true these acts of repeal *have not expressly declared this; but they strongly imply it.* The preamble of the act for abolishing the star-chamber, recites the laws in favour of liberty, as reasons, among others, for the repeal. This, instead of repealing it, was in truth condemning it *a priori*, was implying it to be *ipso facto* null and void, as being contrary to those charters of liberty. Again, the 16 Car. I. c. 10 and 11, not only abolish the courts of star-chamber and high-commission, but enact that from henceforth no new courts with the same or like jurisdiction shall be erected, ordained, or appoint-

ed. This was to forbid future parliaments, to erect by form of law, courts like to these; for these courts had been erected by parliament: but how can a present parliament bind a subsequent one from making laws? This prohibition means nothing, unless it means that they thereby declare that any law which hereafter shall erect such courts, contrary to the charters of liberty, must be in its nature absolutely null and void. It is, therefore, plain that the legislature, at that time, must think too that the laws for erecting those courts, which they abolished and forbade to be ever erected again, must have been in themselves absolutely null and void.

But to return to the power of pressing in the crown: it is necessary (as some argue) that this power of pressing should be somewhere. This is granted: for this power of pressing, though it may be made a legal restraint on the liberty of individuals for the good of the whole, does not, like general warrants, give a power inconsistent with the
very

very existence of liberty in all. It is therefore granted that a power to press must be lodged some where; but does it follow, that it must be in the crown? It is where all power is vested by our constitution; in king, lords, and commons: neither pressing nor any thing else can be legal with us, unless it be made so by that authority.

Cases of extreme necessity have been urged as grounds for the king to exert this power independent of the concurrence of the other parts of the legislature. There can be no principle thought of, so contradictory to the interest of a free government, as this of a state-necessity. State-necessity is the natural reason for making a law, but it can be no reason for acting without law, or against it. Necessity is indeed the mother of law, no less than of all other inventions; and laws themselves, however it may seem a paradox, are necessary evils; for they are restraints on the natural liberty of mankind, and by submitting to these restraints we purchase the advantages

advantages of civil society. Necessity is the motive for making laws, but a motive to make differs from a right to make: the motive should operate on those who have the right, which with us, is king, lords, and commons. If extreme necessity can give a right, independent of the legislature, to make or to break the law, where shall we stop? Private persons may use this plea to justify the most abominable deeds a frantic imagination can suggest; and Felton and Ravallac become law-givers. State-necessity is alike the principle of tyrants and assassins, and it concerns kings, no less than subjects, to abhor the doctrine and dread the consequences of it.

Upon the whole, as the law now stands, pressing by the king's warrant is illegal. Let it however be supposed to be only doubtful: a wise minister rather than act by virtue of doubtful powers, would put the matter out of dispute, and procure an act of parliament to make it legal. A good minister would do more; he would find out some better method

thod of manning the navy than by this absurd, this barbarous one, of forcing men against their will into the service. Surely means might be found of making it the interest of seamen to prefer the king's service, to that of the merchants. But this would be to enter on a new subject.

APPENDIX.

kind of manning the navy than by this
 applied this barbarous one of forcing men
 against their will into the service. Surely
 men might be found or trained to the in-
 stead of forcing them to enter the king's service
 to that of the merchants. But this would
 be to enter on a new subject.

APPENDIX.

A P P E N D I X.

JAMES, Duke of York, and Albany, &c.

WHEREAS there is at present a great want of men for manning his majesty's fleet; these are to will and require you forthwith to impress, or cause to be impressed, within the county of ——— and town and county of ——— as well within liberties as without, three hundred able mariners, seamen, watermen, or bargemen, and send them with all possible speed unto ——— there to be put on board such vessels as shall be appointed to receive them, giving unto each man so impressed one shilling for prest-money, and after the rate of one penny per mile for conduct-money, from the place where they shall be impressed to ——— aforesaid. You are to take care that the men impressed be able men, fitting for his majesty's

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jeſty's ſervice; and in the preſſing and conducting them you are to obſerve my former inſtructions for preſſing, ſent you in April laſt, wherein they are not repugnant to this warrant. And all mayors, ſheriffs, juſtices of the peace, bailiffs, conſtables, headboroughs, and all other his majeſty's officers, and loving ſubjects whatſoever, whom it may concern, are hereby required, to be aiding and aſſiſting to you, and thoſe employed by you, in the due execution of this warrant, as they tender his majeſty's ſervice, and will answer the contrary at their perils. Given under my hand and ſeal at St. James's this tenth day of June 1763.

JAMES.

*To the Lord ——— my Vice-Admiral
of the County of ——— and town
and county of ——— or his deputy.*

By Command of his Royal Highneſs

J. WERDEN.

By

*By the Commissioners for executing the Office of
Lord High Admiral of Great-Britain and
Ireland, &c. and of all his Majesty's Planta-
tions, &c.*

IN pursuance of his majesty's order in council, bearing date the 14th day of September 1770, we do hereby impower and direct you to press so many seamen, seafaring men, and persons whose occupations and callings are to work in vessels and boats upon rivers, as you shall be able, in order to serve on board his majesty's ships, giving to each man so impressed, one shilling for prest-money; and in the execution hereof you are to take care (neither by yourself or any other person) to demand, or receive any money, gratuity, reward, or other consideration whatsoever, for the sparing to impress, or for the exchanging or discharging any person or persons impressed or to be impressed, as you shall answer it at your peril. You are not to entrust any person beside yourself with the execution of this warrant, which is to continue in force till the

31st day of December, 1770. And in the due execution hereof, all mayors, sheriffs, justices of the peace, bailiffs, constables, head-boroughs and all other his majesty's officers and subjects, whom it may concern, are hereby required to be aiding and assisting unto you, as they tender his majesty's service, and will answer the contrary at their perils. Given under our hand, and the seal of Office of Admiralty, the 26th day of October, 1770.

R. S.

To Lieutenant —

F. H.

C. J. F.

By Command of their Lordships.

P. S.



F I N I S.